

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 124/95

Date of order 19-5-95

S.R. Nanda S/o Shri Daya Ram Nanda,
aged 60 years, Retired ACS (G),
7/29, Pooja Marg, Rajendra Nagar,
Dholabhatta- Ajmer 305001

... Applicant
VERSUS

1. Union of India through Secretary,
Government of India,
Department of Telecommunications,
Ministry of Communication,
New Delhi - 110 001.
2. The Director General, Telecommunication,
Telecom Commission, Sanchar Road,
Ashoka Road, New Delhi.
3. The Chief General Manager Telecommunication,
Rajasthan Telecom Circle,
Jaipur.
4. The Chief Superintendent,
Central Telegraph Office,
Jaipur.

... Respondents.

CORAM

Hon'ble Mr. O.P. Sharma, Member (Administrative)
Hon'ble Mr. Rattan Prakash, Member (Judicial)

For the Applicant ... Mr. R.P. Pareek

For the Respondents --- ---

O R D E R

PER HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

Applicant Shri S.R. Nanda has filed this application u/s 19 of the Administrative Tribunals Act, 1985, to seek the following reliefs:-

- (i) to quash the impunged order dated 15.6.94 (Annexure A-1) whereby the applicant's representation dated 21.9.92 has been rejected.
- (ii) to quash order dated 31.5.93 (Annexure A-2) whereby the applicant has been disallowed the benefit of the judgment in OA 816/89 filed by Shri N. Lalita & Others and decided by Hyderabad Bench vide its order dated 15.11.91.
- (iii) to direct the respondents to fix the pay of the applicant at par with Shri B. Singh, ACS, Central Telegraph Office, Lucknow w.e.f. the date of his officiating promotion in TTS Group 'B' cadre and pay fixed at the stage of Rs. 650/- on 27.5.78 and to pay arrears thereon.

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(iv) to direct the respondent to pay all benefits enjoyed by Shri B. Singh (his junior) including the pay & allowances during his officiating period as TTS Group 'B'.

2. The facts pertinent to this application are that the applicant while working as Assistant Chief Superintendent (General) in the office of Chief Superintendent, Central Telegraph Office, Jaipur-1, came to know that one Shri B. Singh, his junior, is drawing higher pay than the applicant. He made a representation to the respondent no. 2, The Director General, Telecommunication, New Delhi on 21.9.92 (Annexure A-3) for stepping up of his pay so that his junior, Shri B. Singh, may not be allowed to draw more pay than himself. The grievances of the applicant is that in spite of the representation and he being senior to Shri B. Singh, he has not been granted the desired relief by the respondents, he has therefore been constrained to file this application, on rejection of his representation vide order dated 12/19-01-95 (Annexure A-1) and order dated 31.5.93 (Annexure A-2) and to claim the aforesaid reliefs.

3. We have heard the learned counsel for the applicant at the stage of admission and have also perused the pleading as also the documents filed in support of the application.

4. The main contention of the learned counsel for the application, Shri R.P. Pareek, is that the applicant being senior to Shri B. Singh, was absorbed in TTS Group 'B' on regular promotion on 22.10.82, whereas his junior, Shri B. Singh, was promoted to TTS Group 'B' cadre on 23.6.84, yet the pay of Shri B. Singh was fixed at Rs. 845/- in the pre revised pay scale of Rs. 2000-3500 and the applicant's pay was fixed at Rs. 650/-. It has also been contended that since a similarly situated individual Shri B. Bandopadhyaya in OA no. 393/94 has been granted the stepping up of pay vide order dated 18.8.94 by Calcutta Bench of the Tribunal in the

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matter of B. Bandopadhyaya Vs. Union of India & Others, he too should be granted the same benefit of pay fixation at par with his junior, Shri B. Singh. It has, therefore, been urged that the action of the respondents in rejecting his representation vide the impugned orders Annexures A-1 and A-2 are arbitrary, illegal, unconstitutional and capricious and against principles of natural justice and should be set aside and the applicant should be awarded the same relief as has been awarded in the case of B. Bandopadhyaya.

5. The facts as have been narrated by the applicant indicate that the applicant now is a retired person has been senior to Shri B. Singh in relation to which he is claiming the stepping up of pay, as indicated in Annexure A-4. From the perusal of the documents filed by the applicant himself, it is made out that Shri B. Singh, who was junior to the applicant was given an officiating promotion in the TTS Group 'B' cadre w.e.f. 27.5.78 and his pay was fixed at the stage of Rs. 650/-. It is on account of this officiating promotion that Shri B. Singh's pay appears to have been fixed higher than the applicant on regular promotion w.e.f. 23.6.84. The applicant asserts that though he himself as well as Shri B. Singh and on Shri B. Bandopadhyaya in the aforesaid OA 393/94, belong to the same Bench, yet he has not been awarded the benefit of the judgment in OA 816/89 of the Hyderabad Bench of the Tribunal vide its order dated 15.11.91 and this fact amounts to discrimination under Article 14 & 16 of the Constitution.

6. It has further been averred by the learned counsel for the applicant that the present OA is within limitation as it has been filed within time after the date of rejection of his representation made in the year 1992.

7. We have given anxious thought to the arguments of the learned counsel for the applicant and perused the authorities

relied upon by him in support of his plea to treat this application within limitation.

8. Taking up first the plea of limitation. The version of the applicant himself is that the cause of action for the first time arose to the applicant on 27.5.78 when his junior, Shri B. Singh, was given officiating promotion in TTS Group 'B' cadre. The second time, when the cause of action arose in favour of the applicant can be said to be on 23.6.84 when his junior, Shri B. Singh, was promoted in TTS Group 'B' cadre on regular basis and his pay fixed. The applicant did not approach the respondents for stepping up of his pay, firstly after 27.5.78 when his junior, Shri B. Singh, was given officiating promotion, secondly, when his junior, Shri B. Singh, was promoted to the TTS Group 'B' cadre on regular basis w.e.f. 23.6.84. Not only this he kept silent for almost 8 years and for the first time made a representation on 21.9.92 (Annexure A-3) to the respondents, which was rejected vide order dated 19.1.95 (Annexure A-1). Before this communication dated 19.1.95, a general order of not extending the benefit in L. Lalita's case was issued as early as on 31.5.93 and circulated on 25.6.93. The applicant on the one hand has tried to invoke the cause of action for his OA from the date of the rejection of his representation vide order dated 19.1.95 and on the other hand, he counts the cause of action after the decision dated 18.8.94 in B. Bandopadhyaya's case (supra) when it came to his knowledge. In other words, the applicant failed firstly to challenge the fixation of the pay of his junior, Shri B. Singh, w.e.f. 27.5.78 in time and secondly also when Shri B. Singh was made regular in TTS Group 'B' cadre w.e.f. 23.6.84. On the one

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hand, it is asserted by the learned counsel for the applicant that the applicant as also Shri B. Singh being members of the TTS Group 'P' Cadre Officers of the Telecom Department have all India seniority list and there is all India transfer liability; yet the learned counsel for the applicant has failed to satisfy as to why the applicant did not pursue his remedy for stepping up of his pay soon after his junior, Shri B. Singh's pay was fixed at a higher stage and on giving him officiating promotion in the year 1978.

9. In other words, the applicant has failed to take timely action firstly after his junior, Shri B. Singh, was given officiating promotion in the year 1978 and secondly, when Shri B. Singh was appointed on regular basis in the TTS Group 'B' cadre w.e.f. 23.6.84. Even after 23.6.84, the applicant kept silent and did not pay any heed to his grievance for almost eight years. When the applicant himself accepts that the seniority list is maintained on All India basis and the Officers are also subject to all India transfer liability, it cannot be believed that he had no notice of his happening till the year 1994. In fact he makes a representation on 21.9.92 (Annexure A-3) for the first time after almost eight years and this action of the applicant is highly belated. Even if the applicant did not take any step after 23.6.84, it was incumbent upon him to have initiated the action immediately after the enforcement of the Central Administrative Tribunals Act, 1985, which came into force on 1.11.85; in accordance with Section 21(2) of the Administrative Tribunals Act, 1985, i.e. within three years immediately preceding the date on which the proceeding the date on which the jurisdiction, power and authority of the Tribunal became exercisable under this Act. The representation itself made on 21.9.92 by the applicant was made beyond the period

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of limitation prescribed under the Act. The rejection of it by the respondents vide their order dated 19.1.95 (Annexure A-1) would not confer upon the applicant a new cause of action when by general order dated 31.5.93 (Annexure A-2) ~~it~~ stood already disapproved. The law of limitation says that once limitation starts to run, it never stops. The period of limitation started firstly in the year 1973 and secondly in 1984 but the applicant failed to approach the appropriate Forum/Tribunal within the permissible period granted under the Act. In any view of the matter this application which has been made on 22.3.95 is hit by the mandatory bar of limitation laid down under Section 21 of the Administrative Tribunals Act, 1985.

10. It may also be mentioned that the limitation cannot be taken from the date of judgment of another Bench of the Tribunal even though it may be in relation to a similarly placed individual. It has been held by Hon'ble the Supreme Court in the case of Bhoop Singh vs. Union of India & Others reported in JT 1992(3)SC 322 that if no attempt is made out by the petitioner to explain why he chose to be silent for so long; if too he was interested in getting any relief and had not abandoned his claim; he should have approached the Court/Tribunal within the period prescribed under the law. The contention regarding discrimination made under Article 14 of the Constitution is also of no avail as it has been laid down by the Hon'ble the Supreme Court in Bhoop Singh's case (supra) at page 326 as under:-

"If the petitioner's contention is upheld that lapse of length of time is of no consequence in the present case, it would mean that any such police constable can choose to wait even till he attains the age of superannuation and then assail the termination of his service and claim monetary benefits for the entire period on the same ground. That would be a startling proposition. In our opinion, this cannot be the true

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import of Article 14 or the requirement of the principle of non-discrimination embodied therein, which is the foundation of petitioner's case."

Further it has been observed by the Hon'ble Supreme Court at page 327 as under:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly."

11. The law laid down by the Hon'ble Supreme Court in Bhoop Singh's case (supra) applies with full force in the present case, and the applicant cannot take the benefit of the judgment of the Calcutta Bench of the Tribunal dated 18.8.94 (Annexure A-2) in E. Bandopadhyaya's case. The other authorities cited by the learned counsel for the applicant do not apply to the facts of the instant case and in view of the law laid down by the Hon'ble Supreme Court in the case of Bhoop Singh's case (supra), it is unnecessary to discuss the authorities cited by the learned counsel for the applicant which are of no avail. The case relied upon by the learned counsel for the applicant, A. Sagayanathan & Others Vs. Divisional Personnel Officer, 1992 Supp (2) SCC 172 is also of no avail. In this case no ~~particulars~~ ^{detailed} particulars have been given about the delay in filing the application. From the perusal of the judgment of the Hon'ble the Supreme Court, it is made out that the apex Court has entertained the application filed by the applicant therein inspite of the delay and has remanded the case for disposal as per law. Further the judgment in Bhoop Singh's case (supra) has been delivered by Hon'ble the Supreme Court on 29.4.92 whereas the judgment relied upon by the learned counsel for the applicant in A. Sagayanathan & Others (supra) was decided by Hon'ble the Supreme Court on 26.10.90. In view of the latest view

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of Hon'ble the Supreme Court in Bhoop Singh's case, the applicant cannot be allowed to take any advantage of the decision in A.Sagayananthan & Others' case. It is pertinent to note that even in N. Lalita & Others Vs. Union of India & Others, decided by the Hyderabad Bench of the Central Administrative Tribunal, on 15.11.91. (on which reliance has been placed), even though the Learned Member of the Bench came to the conclusion that the applicants therein had clearly failed to approach the Tribunal within the prescribed period of limitation u/s 21 of the Administrative Tribunals Act, 1985, yet in the facts & circumstances available in that case, the learned Member of the Bench counted the cause of action as having arisen on 22.9.86 when the application in fact was filed on 31.9.89 and the cause of action therein having actually arisen on 5.8.87. In the instant case, the failure of the applicant to initiate any action in the year 1978, after Shri B. Singh was given officiating promotion, and his inordinate delay to make the first representation almost after 3 years, when the cause of action for the second time arose as early as on 23.6.84, when Shri B. Singh was made regular in the TTS himself Group 'B' cadre exhibits that it is the applicant/who is responsible for sleeping over his rights for such a long time. The law does not come in it for such an individual. The equitable discretion of the Tribunal cannot also be taken assistance of by the applicant in view of the statutory and mandatory provisions of limitation prescribed u/s 21 of the Administrative Tribunals Act, 1985. The applicant thus has miserably failed to approach the Tribunal within the period of limitation, prescribed u/s 21 of the Administrative Tribunals Act, 1985, and on this score only the application is liable to be dismissed.

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12. For the aforesaid reasons, we are of the view that the application filed by the applicant is hit by the bar of limitation u/s 21 of the Administrative Tribunals Act, 1985, and it is hereby rejected at the stage of admission itself. Order accordingly.

Rattan Prakash
(RATTAN PRAKASH)
MEMBER (J)

O.P. Sharma
(O.P. SHARMA)
MEMBER (A)

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